

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - FLINT

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO.: 4:05-CR-50070

vs.

HON. PAUL V. GADOLA
MAG. JUDGE MICHAEL J. HLUCHANIUK

KERY LINNMAHAN,

Defendant.

_____ /

**ORDER FOR PSYCHIATRIC OR
PSYCHOLOGICAL EXAMINATION**

On January 16, 2008, defense counsel David I. Megdell, filed a motion with the court under 18 U.S.C. § 4241(a) requesting that a determination be made as to the defendant's competency to stand trial. (Dkt. # 58). On January 17, 2008, that motion was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) for hearing and determination. (Dkt. # 59). A response to the motion was filed by the government on January 22, 2008, expressing no opposition to the motion. (Dkt. # 61).

A hearing on the motion was held on February 4, 2008. On that date the parties appeared for the purpose of conducting such a hearing. During the hearing it was noted that this matter had been pending since April of 2006 and that the defendant was now working with his third attorney. His first attorney had been retained and both his second and third attorneys were appointed by the court due to the defendant's inability to hire his own attorney. The defendant acknowledged that he had discharged his two prior attorneys and he was presently unsatisfied with his current attorney due to differences of opinion on the proper strategy to follow in his defense.

At the hearing Mr. Megdell reiterated his arguments from the written motion and made additional arguments which he felt supported his contention that the defendant may not be able to understand the nature and consequences of these proceedings and may not be able to assist in his defense in a meaningful way. Government counsel did not oppose the motion and pointed out that the defendant had sent certain documents to the government that allegedly included a “confession” to criminal conduct and also a statement expressing some limitations in the mental capacity of the defendant. The defendant personally addressed the court and acknowledged some deficiencies in his mental capacity but denied being incompetent to stand trial. Based on the past difficulties that the defendant has had working with his attorneys, Mr. Megdell’s concerns about the defendant’s ability to make logical decisions based on the defendant’s available choices and the fact that the defendant is providing written statements to the government admitting to criminal conduct, it appears that there is reasonable cause to believe that the defendant is presently suffering from a mental disease or defect that has rendered him incompetent to understand the nature and consequences of the proceedings or unable to properly assist in his defense.

Accordingly, **IT IS ORDERED**, pursuant to 18 U.S.C. § 4241(b), that the Pretrial Services Agency shall arrange for a psychiatric or psychological examination of the defendant to be conducted under the provisions of 18 U.S.C. § 4247(b) and (c) and for the results of such an examination to be furnished to the court and to the parties prior to the next scheduled hearing in this matter.

IT IS FURTHER ORDERED that the hearing with respect to this matter shall be continued, for a reasonable period, without date at the present time until the report ordered above has been completed.

IT IS FURTHER ORDERED that the time period associated with this motion, from the filing date of the motion up to and including the date on which a determination is made regarding the defendant's competency to stand trial, shall be excluded under the Speedy Trial Act pursuant to the terms of 18 U.S.C. § 3161(h)(1)(A).

Dated: February 5, 2008

s/ Michael J. Hluchaniuk
Michael J. Hluchaniuk
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Barbara C. Tanase, AUSA, David I. Megdell, Esq., and I hereby certify that I have mailed or hand delivered the paper to the following non-ECF participants: U.S. Marshal, 600 Church St., Flint, MI 48502, Pretrial Services Officer, 600 Church St., Flint, MI 48502

s/ James P. Peltier
James P. Peltier
Courtroom Deputy Clerk
810-341-7850